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6 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

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8 ADRIENNE BENSON, *et al.*,

9 Plaintiffs,

10 v.

11 DOUBLE DOWN INTERACTIVE, LLC,

12 Defendants.

Cause No. C18-0525RSL

ORDER REGARDING
DEFENDANTS' MOTIONS TO
COMPEL DISCOVERY AND TO
EXTEND RESPONSE DEADLINE

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14 This matter comes before the Court on defendants' "Motion for Protective Order and to
15 Compel Document Production and Answers to Interrogatories." Dkt. # 159. Defendants argue
16 that plaintiffs breached the parties' August 2020 scheduling agreement by slow-playing their
17 document production and giving defendants too little time in which to conduct depositions.¹
18 Defendants seek (a) to compel plaintiffs to supplement their responses to Requests for
19 Production Nos. 6, 11, and 14 and Interrogatories Nos. 2, 6, 12, 13, and 17, and (b) to obtain a
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22 ¹ The parties agreed that "[d]efendants shall be afforded a reasonable opportunity to pursue
23 written discovery and depositions from [p]laintiffs in their capacity as proposed class representatives"
24 and that, "[p]rovided . . . [d]efendants work with [p]laintiffs to set prompt depositions after [p]laintiffs
25 reasonably complete their answers to written discovery and production of documents responsive to
26 Defendants' First Set of RFPs, [p]laintiffs agree to refrain from filing a motion for class certification
until their depositions have been held or until [d]efendants have been afforded a reasonable opportunity
to depose [p]laintiffs but have declined the opportunity." Dkt. # 135 at 2.

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DEADLINE - 1

1 production, deposition, and briefing schedule that allows defendants to take plaintiffs'
2 depositions prior to having to respond to the motion for class certification. They argue that such
3 an order would promote judicial efficiency and is consistent with the parties' discovery
4 agreements.

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6 In a separate motion, Dkt. # 188, defendants seek relief from the deadline for opposing
7 plaintiffs' now-filed motion for class certification until after (a) the Court has resolved
8 defendants' outstanding motions to strike nationwide class allegations, motion to dismiss, and
9 discovery motion and (b) defendants have had an opportunity to depose the named plaintiffs and
10 the eighteen other individuals who submitted declarations in support of class certification.

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12 Having reviewed the submissions of the parties, the Court finds that the existing briefing
13 schedule, pursuant to which defendants have until April 5, 2021, to file their response to the
14 motion for class certification, adequately balances the needs of the parties and the Court.
15 Defendants have not shown that resolution of their motion to dismiss² or supplemental responses
16 to written discovery³ are necessary to present facts essential to justify their opposition to class
17 certification. Fed. R. Civ. P. 56(d). With regards to their argument that "[p]laintiffs have
18 suggested they will not agree to search for additional [ESI] documents using search items
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21 ² The Court will endeavor to resolve the nationwide class allegation issue in the next week. For
22 purposes of the motion for class certification, the parties should assume that neither the United States
23 Constitution nor Washington's choice-of-law rules precludes the application of Washington law to a
nationwide class in the circumstances presented here.

24 ³ In reply, defendants argue for the first time that information gleaned from hardware used to
25 access its games is relevant to whether plaintiffs received the benefit of the bargain they expected from
26 Double Down. Because plaintiffs did not have an opportunity to address this argument, it has not been
considered.

1 defendants identified within 21 days of the initial ESI production” (Dkt. # 159 at 12), the
2 argument appears to be based on supposition. When defendants identified their additional search
3 terms, plaintiffs ran searches using the new terms on the sources previously identified. The Court
4 presumes, based on plaintiffs’ representations (Dkt. # 190 at 13), that the supplemental
5 production has now been made. Finally, plaintiffs have offered to make the named plaintiffs and
6 six of the declarants available for deposition prior to defendants’ response deadline and are
7 willing to stipulate to an extension of the briefing schedule if the deponents are unavailable. The
8 Court generally adopts plaintiffs’ proposal at Dkt. # 198 at 16. Under the current briefing
9 schedule, the parties have almost a month in which to conduct eight remote depositions: if the
10 parties agree that more time is necessary, they may file a stipulation to renege the motion for
11 class certification.
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14 Discovery in this matter reopened when the case returned from the Ninth Circuit in
15 February 2020. Defendants’ written discovery was served on plaintiffs in August 2020, and
16 plaintiffs timely responded. At approximately the same time, the parties negotiated a case
17 schedule that included no deadlines, instead asserting that the parties would have a “reasonable”
18 amount of time to perform tasks necessary to bring the class certification matter before the
19 Court. In the absence of a deadline, class certification discovery moved at a glacial pace and
20 resulted in various motions essentially arguing about what was “reasonable.” The Court finds
21 that a more formal case management schedule based on a November 2021 trial date is needed.
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27 ORDER REGARDING MOTIONS TO COMPEL
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DEADLINE - 3

1 For all of the foregoing reasons, defendants' motions for protective order and to compel
2 discovery (Dkt. # 159) and motion for an extension of the response deadline (Dkt. # 188) are
3 GRANTED in part and DENIED in part.
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6 Dated this 10th day of March, 2021.

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8 Robert S. Lasnik
9 United States District Judge
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